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Request for the inclusion of an item in the provisional agenda of the sixty-fourth session

Observer status for the Global Fund to Fight AIDS, Tuberculosis and Malaria in the General Assembly

Note verbale dated 14 July 2009 from the Permanent Mission of the United Republic of Tanzania to the United Nations addressed to the Secretary-General

The Permanent Mission of the United Republic of Tanzania to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to request, pursuant to rule 13 of the rules of procedure of the General Assembly, the inclusion in the provisional agenda of the sixty-fourth session of the General Assembly of an item entitled "Observer status for the Global Fund to Fight AIDS, Tuberculosis and Malaria in the General Assembly".

An explanatory memorandum (annex I) and a draft resolution (annex II) in support of the above request are attached to the present letter pursuant to rule 20 of the rules of the procedure.

We also have the honour to request that the present letter be circulated as a document of the General Assembly.

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Annex I

Explanatory memorandum

1. Historical background

1. The Global Fund to Fight AIDS, Tuberculosis and Malaria was established in 2002 following calls in 2001 by the Secretary-General and the General Assembly of the United Nations for the establishment of such a fund. On 27 June 2001, the General Assembly adopted a resolution supporting the "establishment, on an urgent basis, of a global HIV/AIDS and health fund" to finance a response to the epidemic (resolution S/26-2). Immediately following the special session of the General Assembly on HIV/AIDS in June 2001 the then Secretary-General, Kofi Annan, appointed a Transitional Working Group under the leadership of Ugandan Minister Chrispus Kiyonga to develop the basic principles (Framework Document) and structure of this new organization. Several country delegations served on the working group, preparing for the first board meeting in January 2002.

2. Purpose

2. According to the Framework Document of the Global Fund, "The purpose of the Fund is to attract, manage and disburse additional resources through a new public-private partnership that will make a sustainable and significant contribution to the reduction of infections, illness and death, thereby mitigating the impact caused by HIV/AIDS, tuberculosis and malaria in countries in need, and contribute to poverty reduction as part of the Millennium Development Goals".

3. While the Global Fund was created with a strong mandate from the General Assembly it currently has no status that would allow regular interaction and reporting at United Nations Headquarters, including the General Assembly and the Secretariat. The history of the Global Fund is tightly linked to the United Nations. A grant of observer status will increase the Global Fund's effectiveness in achieving broad goals set by the United Nations such as the Millennium Development Goals. Because of this interconnectedness, both the Global Fund and the United Nations will benefit from the Global Fund's status as an observer.

3. Organizational structure

4. The Global Fund is a partnership of Governments, civil society, private sector corporations and foundations, and communities of persons affected by the three diseases. A total of 44 countries have contributed financial resources to the Global Fund, and the Global Fund has made grants to 137 countries in five continents — Africa, Asia, Australia, Europe and Latin America and the Caribbean.

5. The Global Fund functions through the Board, a secretariat headed by an Executive Director, the independent Technical Review Panel, the Partnership Forum, and an independent Office of the Inspector-General:

(a) The Board of the Global Fund consists of representatives of donor and recipient Governments, non-governmental organizations, the private sector (including businesses and foundations) and communities affected by the three diseases. Key international development partners — the World Health Organization, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the World

Bank — are non-voting members of the Board, and the World Bank also serves as the Global Fund's trustee. The Board is the Global Fund's supreme governing body;

(b) The secretariat — headed by an Executive Director — is responsible for the day-to-day operations of the Global Fund, including mobilizing resources from the public and private sectors, managing grants, providing financial, legal and administrative support, and reporting information on the Global Fund's activities to the Board and the public;

(c) The Technical Review Panel is an independent and impartial team of experts that reviews eligible grant proposals for technical merit including soundness of approach, feasibility and potential for sustainability, and on the basis of this review recommends proposals for funding to the Board;

(d) The Partnership Forum meets every two years, bringing together a broad range of global stakeholders to discuss Global Fund performance and to make recommendations on its strategy and effectiveness;

(e) The Office of the Inspector-General operates as an independent unit of the Global Fund, reporting directly to the Board. Its primary purpose is to provide the Global Fund with independent and objective oversight to ensure the integrity and effectiveness of its programmes and operations including compliance with policies and procedures.

4. Financing

6. The Global Fund is funded by contributions by Governments, corporations and foundations, usually through multi-year pledges. The Global Fund has a voluntary replenishment mechanism, and the current replenishment period is 2008-2010. Total pledges and contributions to the Global Fund until the end of 2010 amount to approximately US$ 21 billion.

5. Activities

7. The Global Fund provides financing to programmes for the prevention, treatment and care of HIV/AIDS, tuberculosis and malaria through funding cycles in which it issues periodic calls for proposals from multisector partnerships of Governments, civil society and private sector partnerships in highly affected developing countries, evaluates these proposals, and disburses funds to Board-approved proposals.

8. The Global Fund has so far approved $16 billion to programmes in 137 countries in eight funding rounds. As the Global Fund is a performance-based funding institution, funds are disbursed only upon proof of performance with initially disbursed tranches of funds. The Global Fund has so far disbursed approximately $7.8 billion. A total of 63 per cent of the resources of the Global Fund have gone to support prevention, treatment and care programmes in Africa, 20 per cent going to Asia and the Pacific, and the rest to Latin America and the Caribbean and Eastern Europe.

9. The Global Fund is located at Geneva, and has no country offices. It relies on its partnerships with other development and technical partners, including the United Nations and the specialized agencies, civil society and the private sector to support countries in delivering effective programmes and services to communities in need.

These programmes evolve from national plans and are developed by implementing countries rather than the Global Fund. Programmes are developed by Global Fund country coordination mechanisms, which are independent, national level multisector partnerships that reflect the global partnership structure of the Global Fund. The yearly operational costs for managing the Global Fund are less than 4 per cent of the value of active grants.

10. A number of principles guide the operation and activities of the Global Fund. It operates as a financial instrument, not an implementing entity. The Global Fund makes available and leverages additional financial resources to support programmes that reflect national ownership. The Global Fund operates in a geographically balanced manner (reflecting the burden of diseases and consequent demand from each region), and pursues an integrated and balanced approach to prevention and treatment. It evaluates proposals through an independent review process, and operates in a transparent and accountable manner.

11. In comparison to other sources of funding, Global Fund resources provide 23 per cent of global financing in the fight against HIV/AIDS, 60 per cent of the global financing for malaria interventions, and 57 per cent for tuberculosis. A total of 54 per cent of Global Fund resources go to HIV/AIDS programmes, 30 per cent to malaria, and 16 per cent to tuberculosis.

12. The Global Fund has achieved significant global impact in the fight against these pandemics in the seven years of its existence: financing by the Global Fund has put 2.3 million people on treatment for HIV/AIDS, more than 5 million on treatment for tuberculosis, and provided more than 80 million insecticide-treated bednets to prevent malaria in Africa and Asia.

13. The current focus of the Global Fund is to scale up its impact even further to fight these three diseases. To this end, the Global Fund is working with its partners to support countries to increase their capacity to utilize these resources effectively.

6. Relations with other organizations

14. The Global Fund has signed a number of memorandums of understanding with its partners, UNAIDS and its 10 co-sponsors,[1] and the Stop TB Partnership to strengthen the close collaboration that exists between the Global Fund and those entities. The Global Fund also has a close relationship with the United Nations Development Programme (UNDP), which is an implementer of Global Fund-financed programmes in several countries, as well as with the Roll Back Malaria Partnership and the World Bank, which is the trustee of the Global Fund's resources and makes disbursements to Global Fund-financed programmes.

15. The Global Fund continues to be active in the work of a number of key platforms for major players in global health, working with other organizations towards harmonization, avoiding duplications, and clarifying the roles of each organization in global health. Examples include the Global Task Team on Improving AIDS Coordination among Multilateral Institutions and International Donors and

[1] Specific operational arrangements may be developed with individual UNAIDS co-sponsors as may be necessary, under the overarching framework of the memorandum of understanding.

the H8, an informal group of the executive heads of organizations playing leading roles in international public health.[2]

7. The history of observer status at the United Nations

16. Following the adoption of the Charter of the United Nations, observer status was accorded to States that could not at that point qualify for membership in the Organization but whose presence was important to United Nations work. As the role of the United Nations expanded, this status was extended to international intergovernmental organizations whose work was deemed important to the performance of United Nations tasks.[3] As at 11 December 2008 the General Assembly had granted observer status to 72 organizations.

17. Because there are no formal constitutional rules in the Charter for granting observer status, the process has developed through practice. Currently observer status is granted to entities "(i) whose missions are connected to or are part of the responsibilities assumed by the United Nations; (ii) whose presence and limited participatory rights are important to the performance of the observer's organizational mission and responsibilities; and (iii) whose presence and limited participatory rights are important to the discharge of the United Nations missions and responsibilities".[4]

18. This practice has included granting observer status to entities that are not strictly intergovernmental organizations. During the 1990s the General Assembly granted observer status to four organizations that were not purely intergovernmental: the International Committee of the Red Cross, the International Criminal Police Organization (INTERPOL), the Sovereign Military Order of Malta and the International Federation of Red Cross and Red Crescent Societies.[5]

19. In 1994, the General Assembly requested that the Sixth Committee suggest criteria to be used when granting observer status in the General Assembly. At the 84th plenary meeting of its forty-ninth session, the General Assembly considered the recommendation of the Sixth Committee and decided that the granting of observer status should be confined to States and to those intergovernmental organizations whose activities cover matters of interest to the Assembly (decision 49/426).

20. The General Assembly took note of the oral report of the Chairman of the Sixth Committee, which stressed the discretionary nature of the decision to grant observer status. The Chairman shared the views of some delegations who believed it was possible for the General Assembly to grant observer status even when the organization was not strictly intergovernmental, if the organization contributed to the work of the General Assembly. Therefore, the decision to grant observer status is a discretionary one, which the General Assembly can take if it feels that the work of an organization is important enough to warrant such recognition.

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[2] The H8 includes the executive heads of the World Bank, the Global Fund, WHO, UNAIDS, UNICEF, the United Nations Population Fund (UNFPA), the Global Alliance on Vaccines and Immunization and the Bill and Melinda Gates Foundation.

[3] W. Michael Reisman, "Opinion as to the qualifications of the Global Fund for observer status at the United Nations". Unpublished paper.

[4] Ibid.

[5] Ibid.

8. What is an intergovernmental organization?

21. While the decision to grant observer status is discretionary, it is helpful to consider exactly what an intergovernmental organization is and how this definition can influence which organizations are granted observer status. Currently, there is no authoritative definition in international law of the term "intergovernmental organization". Many intergovernmental organizations are created by a constituting treaty, but this is not a formal requirement. In fact, the International Law Commission refused to recognize the treaty requirement because the criterion was not always met in practice.[6]

22. It has been gradually recognized that even if an international organization's constitution is not a formal treaty, the organization can still be called intergovernmental as a result of the role the constitution gives to Governments with regard to such matters as membership, representation and financing. The International Law Commission wrote that the definition of intergovernmental organization should be understood in the sense given to it in practice: this can include an organization composed mainly of States, in some cases having associate members which may be other international organizations.[7] The Commission also suggested the criterion that the organization has its own international legal personality. Independent legal personality can be indicated by recognition from other States.

9. International character of the Global Fund

23. To respond to the urgent need for the establishment of the Global Fund in 2001, it was set up as a Swiss Foundation, on the understanding that the status of the Fund would evolve into an organization with an intergovernmental character strengthened by the strong participation of civil society and the private sector. While it is unusual for an intergovernmental organization to be established under municipal law it is possible. For example, the Bank for International Settlements is considered to be an intergovernmental organization even though it was also established under Swiss law.[8] The arbitration tribunal of the Bank found itself to be intergovernmental because the Bank had immunity from Swiss law, had functions that were primarily public and international in character, and was charged with the performance of an urgent international task. The Global Fund shares many of these characteristics and therefore could also be considered an intergovernmental organization.

24. In 2004, the Global Fund concluded a Headquarters Agreement with the Government of Switzerland which recognizes the Global Fund's international juridical personality. Pursuant to the Headquarters Agreement, the Global Fund enjoys privileges and immunities in Switzerland equivalent to those of other international organizations in Switzerland.

25. In 2006, the Global Fund was designated a public international organization entitled to enjoy certain privileges, exemptions and immunities under the United

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[6] Ibid.

[7] Report of the International Law Commission on the work of its twenty-sixth session [1974], chap. IV, sect. B, para. 7 of commentary to article 2; in *Yearbook of the International Law Commission, 1974*, vol. II (1).

[8] W. Michael Reisman, op cit.

States International Organizations Immunities Act of 1945. This was further recognition of the Global Fund's independent legal personality.

26. The Global Fund's principal decision-making body, the Global Fund Board, consists of 20 voting members. Fifteen of the 20 seats are occupied by representatives of States or groups of States.[9] International organizations (the World Health Organization, the World Bank and UNAIDS) are represented on the Global Fund Board as non-voting members.

27. While the Global Fund actively seeks contributions from private sources, approximately 95 per cent of the amount contributed to date has been paid by States.

28. The Global Fund is a unique body that was created in a time of need to handle a specific problem: reducing the impact of AIDS, tuberculosis and malaria. Even though it was not established through a treaty, the Global Fund's international mission, predominantly State financing and independent legal personality as recognized by the United States and Switzerland all indicate that the Global Fund is more similar to an intergovernmental organization than to a non-governmental organization. Because of its unique character, the granting of observer status to the Global Fund cannot be used as a precedent for non-governmental organizations for similar purposes.

29. The Global Fund will be represented in the General Assembly only by the Executive Director, as mandated by its Board at its 19th meeting.

10. Reasons for seeking observer status for the Global Fund

30. The mandate of the Global Fund explicitly states that it was established to contribute to the achievement of the Millennium Development Goals adopted by the General Assembly in 2000. The work of the Global Fund is directly related to the Millennium Development Goals that address issues of global health, as well as Millennium Development Goal 8 — to establish a global partnership for development. The Global Fund has established itself as the primary multilateral funding institution for Millennium Development Goal 6 (reversing the impact of HIV/AIDS and malaria).

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[9] The composition of the Global Fund Board is as follows:

Donor block

Three seats are held by individual countries, 2 seats are held jointly by two countries, 1 seat is held jointly by three countries, 1 seat is held jointly by the European Commission plus three countries, and 1 seat is held jointly by six countries. Therefore a total of 19 donor countries are directly represented within the Global Fund governance structure (and a large number of others are represented indirectly through the European Commission).

Implementers block

Eastern Europe: 17 countries represented
Eastern Mediterranean: 22 countries represented
Eastern and southern Africa: 22 countries represented
Latin America and the Caribbean: 34 countries represented
South-East Asia: 11 countries represented
West and Central Africa: 25 countries represented
Western Pacific region: 24 countries represented

Therefore a total of 155 implementing countries are represented within the Global Fund governance structure. Altogether 174 countries are represented at Board level.

31. There is movement towards annual review and accountability for progress towards achieving the Millennium Development Goals. The initiative of the President of the sixty-second session of the General Assembly, who hosted a high-level debate on progress towards the Millennium Development Goals in April 2008, is part of this trend. It would be valuable for the Global Fund, as a key partner of the United Nations and the specialized agencies, to be able to participate fully in this forum and bring to the attention of the General Assembly the progress the Fund has recorded in contributing to the Millennium Development Goals.

32. United Nations funds and programmes, and the specialized agencies, are key operational partners for the Global Fund. The Global Fund also depends on those partnerships to achieve its agreed objectives. Being granted observer status in the General Assembly would boost the capacity of the Global Fund to collaborate with other United Nations agencies involved in global health and development and, hence, would allow the Global Fund to better fulfil its mandate of making a sustainable and significant contribution to the reduction of the impact of the three pandemics.

33. The Global Fund is inextricably linked to the United Nations, which played a key catalytic and convening role in its creation. The United Nations system clearly gave global legitimacy to the need for such a financial mechanism. The World Health Organization provided administrative hosting facilities to the Global Fund after its creation through the Administrative Services Agreement until 31 December 2008. Since 1 January 2009 the Global Fund has been operating independently. Observer status for the Global Fund in the General Assembly would formalize and foster the strong link between the United Nations and the Global Fund.

34. The coverage and impact of the Fund is global, with $16 billion committed to prevention, treatment and care programmes in 137 countries. When the more than 40 countries that have contributed resources — some of them implementing countries as well — to the Global Fund are considered together with the implementing countries, the universality of the work of the Global Fund becomes clear: nearly 180 States Members of the United Nations are partners in the Global Fund, either as donors or as implementers of life-saving programmes funded by the Global Fund. The Global Fund's participation as an observer in the proceedings of the General Assembly would strengthen the cooperation between the United Nations and the Global Fund and would facilitate the work of the Global Fund in its mission to reduce the impact of HIV/AIDS, tuberculosis and malaria.

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Annex II

Draft resolution

Observer status for the Global Fund to Fight AIDS, Tuberculosis and Malaria in the General Assembly

The General Assembly,

Wishing to promote cooperation between the United Nations and the Global Fund to Fight AIDS, Tuberculosis and Malaria,

1. *Decides* to invite the Global Fund to Fight AIDS, Tuberculosis and Malaria to participate in the sessions and the work of the General Assembly in the capacity of observer;

2. *Requests* the Secretary-General to take the necessary action to implement the present resolution.